

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MEMORANDUM AND ORDER

This case came before the Court for a hearing on March 18, 2009, to address the presently pending Motion to Withdraw as Attorney [Doc. 75] and Pro Se Motions to Appoint New Counsel [Docs. 81, 83], which have been referred to this Court by order of the District Court [Doc. 84]. Attorney Mike Whalen was present representing Defendant Jose Sanchez, who was also present. Assistant United States Attorney Tracy Stone was present representing the Government.

Attorney Whalen filed his Motion to Withdraw [Doc. 79] with the Court on February 23, 2009. In this motion, Attorney Whalen explains that the resolution of this case may entail pursuing a position on behalf of the Defendant that is in conflict with the interests of an individual, who at one time was a prospective client of Attorney Whalen's. Attorney Whalen states that the interests of the Defendant and this individual are in conflict and that his continuing to represent the Defendant would present an actual conflict. At the hearing, Attorney Whalen reiterated the contents of his motion.

The Defendant stated that he understood the conflict presented by Attorney Whalen's continuing to represent him. He confirmed to the Court that he had also written letters to the Court seeking new counsel and that it was his desire to have Attorney Whalen replaced.

The Government had no objection to appointing new counsel for the Defendant, and AUSA Stone confirmed that, based upon the facts presented in Attorney Whalen's motion, he believed an actual conflict of interest existed in this case.

Based on the foregoing, the Court finds that the Motion to Withdraw [**Doc. 79**] is well-taken, and accordingly it is **GRANTED**. Because the relief sought in the Defendant's pro se motions has been granted, the Court finds the pro se motions [**Docs. 81, 83**] to be moot, and accordingly, they are **DENIED AS MOOT**.

Attorney Francis Lloyd was present at the hearing and was willing to be appointed as counsel for the Defendant. Attorney Lloyd pointed out that he was not fluent in Spanish, as Attorney Whalen was. The Court noted this difference, but found that Attorney Lloyd and the Defendant would be able to communicate sufficiently. The Defendant had no objection to Attorney Lloyd's appointment. Accordingly, the Court hereby **SUBSTITUTES** and **APPOINTS** Attorney Francis Lloyd under the Civil Justice Act (CJA) as counsel of record for Defendant Jose Sanchez.

Further, the Court reminded Attorney Lloyd that the trial of this matter remains set for **Mary 26, 2009**, and instructed Attorney Whalen to turn his file, including all discovery, over to Attorney Lloyd as soon as possible to allow Attorney Lloyd to begin trial preparation in a timely manner.

In summary:

1. The Motion to Withdraw [**Doc. 79**] is **GRANTED**;
2. Defendant's Pro Se Motions [**Docs. 81, 83**] are **DENIED AS MOOT**;
3. Attorney Andrew Whalen is relieved of any further responsibility in this case, and Attorney Francis Lloyd is **APPOINTED** as CJA counsel for the Defendant; and
4. The trial in this matter remains set for **9:00 a.m. on May 26, 2009**, before the Honorable Thomas A. Varlan, United States District Court Judge.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge